

REMARKS

Applicants' attorney thanks the Examiner for her comments. Independent Claims 1, 15 and 32 are amended to remove "mucolytic agents" from the Markush group. Claim 27 is amended to include the limitations of previous Claim 49. Claim 32 is amended to insert "polyglycan" before "gelling agents." Claims 43 and 49 are canceled. Claim 50 is amended to depend from Claim 27. The claims are not otherwise amended.

a) Interview Summary

Applicants' attorney thanks the Examiner for the courtesy of the telephone interview on 11 February 2004 and the follow-up interview on 17 February 2004. As discussed in the first interview, the previous claim rejections were overcome by the Amendment filed 17 December 2003. The Examiner indicated that new claim rejections may issue based on U.S. Patent 4,959,060 to Shimomura and U.S. Patent 5,998,032 to Hansen et al. The undersigned reviewed these references and, in the second interview, offered to distinguish the claims over these references by deleting "mucolytic agents" from the Markush group in the independent claims. The Examiner indicated that another search would be needed before deciding if such an amendment would result in allowance of the claims.

b) Claim Rejections Based On 35 U.S.C. §102(e)

The rejection of Claims 1-6, 8-25, 27-29, 31-34, 36-41, 44 and 46 under 35 U.S.C. §102(e) as anticipated by U.S. Patent 5,990,377 to Chen et al. is respectfully traversed. Chen et al. is assigned to Kimberly-Clark Worldwide, Inc. The instant application is also assigned to Kimberly-Clark Worldwide, Inc. As such, Chen et al. is available as prior art under 35 U.S.C. §102(e) but is not available to support an obviousness rejection under 35 U.S.C. §103(a). See 35 U.S.C. §103(c).

A rejection based on anticipation requires a clear showing that the prior art reference discloses each and every limitation of the rejected claims. Schumer v. Laboratory Computer Systems, 64 U.S.P.Q. 2d 1832, 1842 (Fed.Cir. 2002). Put another way, a device or method which would infringe a claim if later in time, may anticipate the

claim if earlier in time. Polaroid Corp. v. Eastman Kodak Co., 229 U.S.P.Q. 561, 574 (Fed.Cir. 1986), citing Peters v. Active Mfg. Co., 129 U.S. 530, 537 (1889). A method or process claim is directly infringed only when the process is performed. The mere disclosure or sale of equipment capable of use in performing a claimed method does not constitute direct infringement of a method claim. Joy Technologies, Inc. v. Flakt, Inc., 28 U.S.P.Q. 2d 1378, 1381-3 (Fed.Cir. 1993). By the same reasoning, the mere disclosure of a prior art product capable of use in performing a claimed method (without disclosing the method) does not anticipate the method claim.

Chen et al. discloses an absorbent article which can be a disposable diaper, feminine pad, panty liner, incontinence pad, paper towel, hand towel or wiper (Col. 1, lines 8-14). The absorbent article includes an improved topsheet material which provides a clean feel, a rapid z-direction (depthwise) transport of liquid through the topsheet, wet resiliency and absorbency (Col. 2, lines 19-27). The material (referred to elsewhere in Chen et al. as a basesheet) can be treated with chitosan, triclosan and other agents for anti-bacterial benefits (Col. 36, lines 25-29).

The Examiner argues:

In use, the article of Chen provides a method for treating the [proteinaceous] viscoelastic fluid [of Claim 1] (Office Action, p. 3).

However, as explained above, the mere fact that the article of Chen et al. may be capable of use in practicing the claimed method does not anticipate the method. Chen et al. plainly does not contemplate using the absorbent article in combination with chitosan as a gelling agent which crosslinks protein as recited in Claim 1. Chitosan is nowhere mentioned as a gelling agent useful for treating a proteinaceous fluid in a manner which crosslinks protein.

To the contrary, a primary objective of Chen et al. is to provide a material having rapid z-direction transport of liquid (Col. 2, lines 19-25). If the liquid were crosslinked, the objective of rapid transport would be defeated. While Chitosan may be used (in some embodiments) to provide anti-bacterial treatment, the chitosan is not required, and is not used in every embodiment. There is no disclosure of using chitosan to treat a proteinaceous fluid.

Referring to independent Claims 1 and 15, Chen et al. therefore does not disclose the claimed method of treating a viscoelastic proteinaceous fluid. Chen et al. does not disclose treating the absorbent article with a water-soluble gelling agent which crosslinks protein, followed by contacting the absorbent article with the viscoelastic proteinaceous fluid. Chen et al. also does not disclose any of the other treatment chemistries recited in Claim 1.

Claims 2-6, 8-14 and 44-45 depend from Claim 1, and are patentable for at least the same reasons. Claims 16-26 depend from Claim 15. Further regarding Claims 2 and 21, Chen et al. does not disclose treating menses using a gelling agent which crosslinks protein, or using any of the claimed treatment chemistries. Regarding Claims 3 and 16, Chen et al. does not disclose such a treatment chemistry in the form of solid particles. Regarding Claims 4 and 17, Chen et al. (Col. 36, lines 15-19) does not disclose a uniform dispersion of the claimed treatment chemistry. Regarding Claim 6, Chen et al. does not disclose the claimed treatment chemistry along a peripheral region of an absorbent layer. Again, the test for anticipation is not what the prior art may suggest, or render obvious, but what the prior art actually discloses.

Regarding Claim 10, Chen et al. (Col. 36 lines 15-19) does not disclose the treatment chemistry dispersed in a layer so as to form a gradient. Regarding Claims 11 and 24-26, Chen et al. does not disclose a treatment chemistry used as a gelling agent, as this would defeat the objective of rapid liquid transport (Col. 2, lines 19-24). Regarding Claims 13 and 22, Chen et al. does not disclose a treatment chemistry within one segment of bicomponent fibers, or within an interior of polymeric fibers.

Referring to independent Claim 27, Applicants have incorporated the limitations of previous Claim 49 as suggested by the Examiner. Claims 28-29, 31, 46-48 and 50 depend from Claim 27, and are patentable for at least the same reasons.

Referring to independent Claim 32, Chen et al. does not disclose a treatment chemistry selected from the claimed Markush group of water-soluble polyglycan gelling agents, thickening agents, agglutinating agents, plasma precipitators, lysing agents and combinations thereof. Claims 33-34 and 36-42 depend from Claim 32, and are patentable for at least the same reasons.

c) Claim Rejections Based On 35 U.S.C. §102(b)

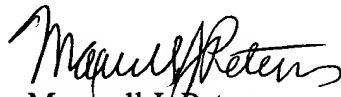
The Examiner rejected Claims 1-6, 8-25, 27-29, 31-34, 36-44 and 46-48 under 35 U.S.C. §102(b) as anticipated by U.S. Patent 4,959,060 to Shimomura et al. This rejection is respectfully traversed.

As discussed in the telephone interview on 11 February, Shimomura et al. is cited as disclosing an absorbent article treated with mucolytic agents. Independent Claims 1, 15 and 32 are amended to delete mucolytic agents from the Markush group. Independent Claim 27 is amended to include the limitations of previous Claim 49, found to recite allowable subject matter. These amendments are believed sufficient to overcome this rejection.

d) Conclusion

Applicants believe that the claims, as now presented, are in condition for allowance. If any minor issues remain, then please telephone the undersigned in order to expedite the prosecution.

Respectfully submitted,


Maxwell J. Petersen
Registration No. 32,772

Pauley Petersen & Erickson
2800 West Higgins Road
Suite 365
Hoffman Estates, Illinois 60195
TEL (847) 490-1400
FAX (847) 490-1403